

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of KMC
Telecom III LLC, KMC Telecom V, Inc.
and KMC Data LLC for Arbitration of
an Interconnection Agreement with
Sprint Communications LP Pursuant to
47 U.S.C. § 252(b)

ISSUE DATE: June 2, 2004

DOCKET NO. P-6039,5426,5988,466/IC-04-703

ORDER REFERRING MATTER TO OAH FOR
ARBITRATION

PROCEDURAL HISTORY

Under the terms of an interconnection agreement, entered into pursuant to the Telecommunications Act of 1996 (the Act),¹ KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data LLC and Sprint of Minnesota, Inc. (Sprint) (collectively, the Parties) agreed to continue to conduct business under the terms of the interconnection agreement until such time that a new agreement was approved by the Commission.

Under the terms of a May 8, 2002 Settlement and Release Agreement, the Parties began negotiation of a new interconnection agreement. The Parties agreed that for the purpose of this arbitration negotiations began on November 28, 2003.

On May 6, 2004, after the Parties failed to reach agreement on certain issues submitted for negotiation, KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC filed a petition for arbitration with the Commission.

On May 19, 2004, KMC Telecom III LLC, KMC Telecom V, Inc., and KMC Data LLC notified the Commission that KMC III (KMC) will be the sole negotiator with Sprint and requested that the documents be revised accordingly. KMC V and KMC Data will then adopt whatever agreement emerges from the arbitration.

The Commission met May 27, 2004 to consider this matter.

¹ Pub. L. No. 104-104, 110 stat. 56 (codified as amended in scattered sections of title 47, United States Code).

FINDINGS AND CONCLUSIONS

I. KMC's Petition

KMC stated that although the negotiations between KMC and Sprint were successful in resolving a number of disputed issues, the negotiations ultimately left 28 issues unresolved. In brief, those issues are as follows:

- Issue #1: Should each party be required to include limitation of liability language in its end user contracts and tariffs?
- Issue #2: Should the provision of the interconnection agreement (ICA) regarding security deposits apply to both parties?
- Issue #3: Should bill-and-keep apply to Voice Over Internet Protocol (VOIP) calls, to the extent they can be identified, until the proper regulatory classification of VOIP is resolved?
- Issue #4: Should Sprint be permitted to begin billing KMC for a loop before confirmation that the loop is working?
- Issue #5: Should Sprint conduct cooperative trouble testing when KMC isolates a problem to Sprint's network?
- Issue #6: Should Sprint provide KMC access to Sprint's digital cross-connect systems (DCS) to facilitate competitive local exchange carrier (CLEC) to CLEC interconnection? What system functionalities should Sprint provide to its DCS?
- Issue #7: May Sprint prohibit KMC from commingling unbundled network elements (UNEs) with wholesale services purchased from a third party? Should the parties' ICA state that Sprint will provide UNEs pursuant to applicable law?
- Issue #8: Should Sprint be permitted to audit KMC's UNE-P customer base?
- Issue #9: What eligibility criteria apply to EEL access?
- Issue #10: Should Sprint be required to comply with Federal Communications Commission (FCC) rules requiring line-splitting?
- Issue #11: What rates, terms, and conditions should apply to line-splitting provided by Sprint?
- Issue #12: Should Sprint perform routine network modifications in accordance with the FCC's rules?

- Issue #13: Should Sprint be permitted to impose loop charges which are not approved by the Commission?
- Issue #14: Should Sprint be permitted to impose dedicated transport charges which are not approved by the Commission?
- Issue #15: Should Sprint be allowed to designate and establish its own Point of Interconnection for the delivery of Sprint-originated traffic?
- Issue #16: Can Sprint shift to KMC its costs for the transport and delivery to KMC of VNXX-enabled, Sprint-originated, ISP-bound and/or local traffic?
- Issue #17: What should be the appropriate process for billing disputes?
- Issue #18: By what measures and standards should Sprint's performance be measured?
- Issue #19: What remedies should be put into place to ensure that Sprint's performance meets appropriate standards?
- Issue #20: Is KMC allowed under prevailing law to share cageless collocation space?
- Issue #21: When will cross-connect charges apply?
- Issue #22: Should billing for terminations begin only when services are ordered to those terminations via an Access Service Request (ASR) or a Local Service Request (LSR)?
- Issue #23: Should KMC be allowed to provision cross-connects within its collocation space without application or additional charges by Sprint?
- Issue #24: Should Sprint be permitted to limit KMC's right to cross-connect with other collocated carriers?
- Issue #25: Should Sprint have sole discretion over whether KMC may use its own technicians to deploy Direct Connects?
- Issue #26: Should KMC be allowed to use its own technicians to install CCXCs?
- Issue #27: May KMC utilize spare capacity on an existing interconnector's entrance facility for the purpose of providing an entrance facility to its collocation arrangement?
- Issue #28: How should the Virtual Point of Interconnection be defined?

KMC requested that the Commission refer this matter to the Office of Administrative Hearings for arbitration.

At hearing KMC and Sprint stated that negotiations were progressing and that they may request additional time before the start of the arbitration proceeding to continue their negotiations. KMC and Sprint stated that in that case they would not challenge a late Commission decision in this matter.

II. Decision to Arbitrate

A. Background

Section 252(b)(1) of the Act establishes the right of a negotiating party to request arbitration from a State commission. The Act states:

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(2)(A) of the Act imposes three conditions for a valid arbitration filing. First, the petitioner must be a party to the negotiations. Second, the petitioner must file its request within the prescribed 135 to 160 day window following the request for negotiation. Finally, the petitioner must include as part of its petition all relevant documentation concerning the issues and the parties' positions on those issues.²

B. Commission Action

The Commission finds that KMC has met all three conditions in the Act as well as the more specific filing requirements of Minn. Rules, Part 7812.1700, Subp.1. First, KMC qualifies as one of the two parties to the negotiation. Second, KMC filed its petition May 6, 2004, 160 days after its November 28, 2003 request for negotiations. This places the filing date within the 135 to 160 day window. Third, KMC's petition clearly states the issues that it has submitted for arbitration and states the position of the negotiating parties on each issue.

Since KMC meets the three conditions for arbitration filings under the Act, the Commission will arbitrate the issues identified by KMC in its petition.

² The Commission has adopted a rule which, as relates to eligibility for arbitration, closely reflects the federal requirements and provides direction regarding what must be filed to meet the federal requirement that the party seeking arbitration file "all relevant documentation concerning the issues and the parties' positions on those issues." See Minn. Rules, Part 7812.1700, Subp. 1.

III. Assignment of Arbitrator

Taking into consideration the parties' comments as well as the requirements of Minn. Rules, Part 7812.1700, the Commission will assign an Administrative Law Judge (ALJ) in the Office of Administrative Hearings to arbitrate this matter. The arbitrator is Beverly Jones Heydinger.

The Commission requests that the arbitrator conduct the arbitration consistent with the Commission's arbitration rules, Minn. Rules, Parts 7812.1700.

Minn. Rules, Part 7812.1700, subp. 16 provides that the assigned arbitrator must hold at least one prehearing conference no later than ten days after the response to the petition is received. In the present case, Sprint's response must be filed no later than June 1, 2004.

IV. Notice of Prehearing Conference

Notice is hereby given that the prehearing conference will take place on June 11, 2004 at 9:30 a.m. in the Small Hearing Room of the Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.

ORDER

1. The Commission hereby assigns this matter to the Office of Administrative Hearings for arbitration. The arbitrator is Administrative Law Judge Beverly Jones Heydinger. The arbitrator is requested to conduct the arbitration consistent with the Commission's Arbitration Rules (Minn. Rules, Part 7812.1700).
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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